

DIVISION IV

**ARKANSAS COURT OF APPEALS**

No. E 06-209

ARTHUR D. HOLSING

APPELLANT

V.

DIRECTOR OF WORKFORCE  
SERVICES and  
DASSAULT FALCON JET CORP.

APPELLEES

**Opinion Delivered** January 17, 2007

APPEAL FROM THE DEPARTMENT  
OF WORKFORCE SERVICES  
BOARD OF REVIEW

[NO. 2006-BR-00908]

REVERSED AND REMANDED

**JOSEPHINE LINKER HART, Judge**

Arthur D. Holsing, formerly a cabinet fabricator for Dassault Falcon Jet Corporation, appeals from a decision of the Department of Workforce Services Board of Review denying him unemployment compensation benefits. On appeal, Holsing argues that the Board of Review erred in finding that he voluntarily left work without good cause. We agree and reverse and remand for an award of benefits.

At his hearing, Arti VanZandt, a Senior Human Resource Generalist for Holsing's employer Dassault Falcon Jet Corporation, testified that Holsing "quit." She stated that he was brought in for a random drug test, that he took the test, "was upset and wanted to go home," and was allowed to take vacation time. VanZandt further testified that during the testing, Holsing made remarks that they "decided" were "threatening" so they decided to investigate. Holsing's supervisor, Bob Anderson, called Holsing and told him he was suspended pending a "disciplinary review." VanZandt admitted that Holsing asked Anderson

the reason why he was being investigated and that Anderson told him that he "could not tell him the specifics." According to VanZandt, later that day, Holsing was "still upset" and called his manager, Rick Carmichael, and "just said he was quitting." She stated that Holsing did not give a reason for quitting.

Holsing testified that the drug test was not "random" but rather it was an "initial" drug test. He stated that "everybody" took a drug test on April 5, but they told him that they "cancelled" his test because he "falsified" it and required him to take another "initial" test. Holsing admitted that he was "upset" because "someone" accused him of falsifying his drug test, which he first heard about as a "rumor" that was circulating around the workplace. He stated that he was taken to the Human Resource office, then to the health nurse's office to take the drug test. He was first administered a breathalyzer test alone with the health nurse. Then when he was about to give a urine sample, Rick Carmichael opened the door and wanted three other individuals besides the health nurse to observe him "pee in the cup." According to Holsing, he was "nervous" and "very embarrassed" about being forced to urinate in front of Carmichael, Bob Anderson, Cathy Dixon, and the nurse. He stated that it "really upset" him and made him very angry.

After he gave the nurse the sample, he told Carmichael and Anderson that he was upset and had to go home and take a vacation day. He denied making threatening remarks to anyone. Holsing stated that as he was leaving, Anderson pulled him aside and told him to "go home, cool off, come back in the morning, come back in the morning and get those cabinets done."

However, Holsing had a "restless night" and called in to take another vacation day. Jeff Predmore, another supervisor at Falcon Jet, approved the request. Two hours later, Bob Anderson called Holsing and told him that he was "suspended until further notice and do not come back on the property." Holsing asked for the reason, and Anderson told him that he could not give him the reason. Holsing also asked how long his suspension would be, and Anderson simply stated, "until further notice." Anderson refused to provide any details. Holsing then called Rich Carmichael and asked him why he was being suspended. According to Holsing, Carmichael told him, "I don't have to tell you nothing, sir. You just stay at home. Do not come back on the property." Holsing admitted that he told Carmichael, "Well, man, if that's the way you're going to treat me, I just resign." Holsing stated that he thought he was being fired and that he did not want that on his work record. He conceded that he should have waited, but was really upset over the "drug test thing" with his integrity being questioned and being required to urinate "in front of four people." Holsing reiterated that he was embarrassed and humiliated by his treatment.

The Board of Review found that Holsing voluntarily left his employment without good cause for quitting. Further, it noted that although Holsing was upset at his perceived mistreatment, he did not ask about filing a complaint or grievance. The Board acknowledges, however, that it had requested that Falcon Jet provide documentation concerning its disciplinary policy and complaint or grievance policy and that Falcon Jet failed to provide that information. Nonetheless, it stated that Holsing's testimony was not persuasive that the company lacked such policies, and it inferred from his testimony that they exist and that he

did not follow them. The Board concluded that Holsing “quit in a fit of pique after being what he considered wrongly accused of falsifying a drug test and of making threats, instead of undergoing the suspension and waiting to see what, if any, further disciplinary action the employer would take against him.”

On appeal, Holsing argues as error, the finding that he voluntarily left work without good cause. He asserts that he took “all the harassment from Rich Carmichael that [he] could.” Holsing recounts the outrage of being ordered to urinate in front of four people, then being suspended without explanation. He states that he attempted to seek answers from his supervisory personnel, but they would not discuss the matter with him. We agree that the Board erred in finding that Holsing voluntarily left his employment without good cause and that he had failed to take adequate steps to preserve his job rights.

On appeal, we review the findings of the Board of Review and will affirm if they are supported by substantial evidence. *Walls v. Director*, 74 Ark. App. 424, 49 S.W.3d 670 (2001). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board’s findings. *Lovelace v. Director*, 78 Ark. App. 127, 79 S.W.3d 400 (2002).

Arkansas Code Annotated section 11-10-513(a)(1) (Supp. 2005) provides that “an individual shall be disqualified for benefits if he or she voluntarily and without good cause connected with the work, left his or her last work.” Good cause is defined as “a cause that would reasonably impel the average able-bodied, qualified worker to give up his or her

employment.” *Perdrix-Wang v. Director*, 42 Ark. App. 218, 856 S.W.2d 636 (1993). Good cause is dependent not only on the reaction of the average employee, but also on the good faith of the employee involved, which includes the presence of a genuine desire to work and to be self-supporting. *Lewis v. Director*, 84 Ark. App. 381, 141 S.W.3d 896 (2004). In addition, in order to receive unemployment benefits, an employee must make reasonable efforts to preserve his or her job rights. *Id.*

We hold the harassment that Holsing was subjected to, being forced to urinate in front of four persons, including two members of the opposite sex, and then being suspended for unspecified conduct without being informed of the reason for the suspension, despite repeated requests to his supervisors for this information, is the type of cause that would impel an average able-bodied worker to give up his employment. *See Magee v. Director*, 75 Ark. App. 115, 55 S.W.3d 321 (2001) (holding that repeated harassment can constitute good cause for leaving employment); *see also Boothe v. Director*, 59 Ark. App. 169, 954 S.W.2d 946 (1997) (holding that sexual harassment of a spouse can constitute good cause for leaving employment). As to whether Holsing took appropriate steps to preserve his job rights, we believe that he did. We note that the perpetrators of the harassment, particularly Rich Carmichael, were the very individuals with whom that Holsing would have to speak to address the problem. Furthermore, it is uncontroverted that Holsing did initiate contact with both Carmichael and Anderson and that they refused to even discuss the matter with him. Under these circumstances, we believe that the law does not require any further effort on his part, and it was reasonable for him to conclude that any further effort on his part would be

futile. *Brooks v. Director*, 62 Ark. App. 85, 966 S.W.2d 941 (1998). Accordingly, we reverse and remand this case for an award of unemployment benefits.

Reversed and remanded.

BIRD and GRIFFEN, JJ., agree.